

CAVEAT STANCE

“ Emotional trauma, I used drugs to escape the memories. I became addicted to drugs. I am frustrated because I’m unable to express my deep feelings. I get angry thinking about what has happened. When I get very angry, I black out, lose all mental capabilities. I go crazy and act out my anger violently. I don’t want to express my deep feelings. I no longer trust anyone. I’m afraid that I will lead a life of crime because I’m not qualified to do anything.... I don’t want this”

(victim of child pornography)

CAVEAT's mandate is to work toward an informed, accountable and integrated justice system which protects the public against violence, recognizes the rights of victims of violence, and to provide as much protection for the rights of victims as possible. We provide a host of services for victims of crime which places us in direct and constant contact with victims of crime which includes victims of child and sexual abuse.

The perspective and expertise of CAVEAT is called upon on a regular basis by all levels of government and other interested organizations and groups. It is our mandate to address issues of a legislative, constitutional and policy character.

Over the years, CAVEAT has made numerous submissions to the federal government in regard to justice related issues. CAVEAT has worked closely and has been a member of a variety of federal government committees charged with studying and making recommendations with respect to correctional, high-risk offender and crime prevention issues. We are also a national advocacy and networking organization promoting awareness of issues concerning public safety. We engage in research and public education. CAVEAT publishes a bi-monthly national paper entitled “CAVEAT Report”. Our British Columbia office also publishes a local report, entitled “B.C. Update”. In addition, we maintain a website which reflects our activities, publications, positions on relevant issues relating to crime prevention, and criminal justice. Users of this site include Canadian students at every level, as well as international users.

In seeking intervener status, CAVEAT wishes only to address the issues touching upon constitutional questions stated. We are not interested in the issue of Mr. Sharpe’s innocence or guilt on the merits. That is a matter strictly for the trial Court. The constitutional issues however have far reaching implications for all

Canadians and the right of Parliament to enact criminal laws to protect the public against dangerous and harmful activity. Legalizing possession of child pornography and drawing distinctions between different forms of child pornography irrespective of its content, turns back enormous progress and achievements made by CAVEAT and other organizations in the area of child pornography, privacy and equality rights. This issue goes to the very core of CAVEAT's mandate as a national victims rights organization.

CAVEAT does not take a position with respect to the constitutional validity of the impugned subsection. We do however forcefully advocate for a strong and comprehensive child pornography law which includes the criminalization of private possession of child pornography.

Our interest is to ensure that the full panoply of the victims' perspective is properly weighted in the Court's analysis so that even if the law were found to be constitutionally overbroad, Parliament would still be entitled to legislate a new child pornography law that fully protects victims.

Apart from working with victims of crime, it is part of CAVEAT's mandate to stay current with the social science literature and expert opinion concerning the harmful effects of child pornography. We are in a unique position to evaluate our practical experiences in the field with the literature. This gives us a unique perspective. The use of these so-called works of the "imagination" on children is real, tangible and far from imaginary. Indeed, our experience in working with victims is that what is depicted in the so-called works of the "imagination" is not imaginary at all, but rather, is a presentation of acts which have actually occurred or played a real and substantive part in an offender acting out.

We at CAVEAT are left with responding to the tragic harm and hurt caused by this material. We do not have time for the niceties of abstract academic discussion which, for us, is overwhelmed by an overriding reality of harm.

Precisely the same point can be made with respect to the use of the hypotheticals which were used to inform the overbreadth constitutional analysis. There is a serious absence of an air of reality presented by these hypotheticals.

We are deeply concerned about the lack of attention paid and weight given, if any, to the applicable community standards and the rights of victims, and in particular the child victims of pornography. This goes beyond an acknowledgement that child pornography is harmful to children and the community at large, and extends to the fact that children, and through them, the community at large, independently, have rights which must be protected. This is not just about the 2(b) Charter rights of the accused.

Further, there remains a deficiency in the court record concerning the extensive social science research establishing a causal link between all forms of child pornography and harms to children and society at large. CAVEAT's perspective on this issue is different from that presented by the other parties to this appeal.

CAVEAT has played a significant role in assisting victims of pornography marshal expert evidence for Court proceedings, as well as being helpful in introducing for the Court's benefit the relevant social science literature concerning the harmful effects of pornography and the countervailing interests. The experience and expertise that CAVEAT has developed leads us to the following observations which we submit reflects an important and useful perspective necessary for the effective adjudication of the issues at bar:

(a) That all child pornography is harmful. Making a legal distinction between child pornography that uses actual children and child pornography that takes the form of written material, drawings or sketches, is simply untenable and cannot be supported at any level.

(b) That the harmful effects of child pornography regardless of whether actual children are used or not, includes everything from sexual violence and abuse, to the legitimization of sexual violence and abuse, the promotion of tolerance of sexual violence and abuse, instilling attitudes of domination and discrimination against children, and attitudinal denigration and subordination in general.

(c) That the appearance of simulated consent and pleasure in child pornography regardless of whether actual children are used or not, is particularly harmful in promoting sexual abuse myths and desensitizing its consumers to abuse and degradation.

(d) That non-violent child pornography of any kind which is degrading and dehumanizing lowers the inhibitions on aggression by adults against children.

(e) That there is a distinction to be made between child pornography (of the violent or dehumanizing variety) and erotica (which portrays explicit sex).

(f) That the legalization and legitimization of child pornography in any form, acts as a deterrence to the reporting of child sexual abuse, and in particular the reporting of that abuse which gives rise to particular pornographic products.

(g) The harmful effects of child pornography regardless of whether actual children are used or not, include inciting violence and sexual abuse, imitation, the perpetuation of sexual abuse (through the making of the pornography alone), enhancement of sexual fantasies, and negative social learning and conditioning.

(h) The effect of negative social learning and conditioning manifest itself in attitudes which objectify children, increase tolerance for violence, inequality and domination with respect to children, trivializing sexual abuse, desensitizing responses to abuse, diminishing inhibitions and fear of sanctions or disapproval by peers with respect to sexual abuse, and increasing sexual aggression.

(i) The formation of sexual predators is strongly linked to the development of deviant sexual arousal patterns caused by child pornography of any kind.

(j) Non-violent child pornography is not the same as erotica.

(k) Significant exposure to non-violent child pornography in any form, instills a desire for violent child pornography.

(l) Child pornography results in a pervasiveness of sexual violence toward children.

(m) There is a surprising level of tolerance toward violence in society and the degree to which it is institutionally entrenched can be enhanced if possession of child pornography is not proscribed.

(n) The harmful effects of child pornography and the significant role child pornography plays in linking physical and sexual violence against children is well documented.

(o) The embarrassment and humiliation suffered by victims of child abuse and sexual violence is extreme as is the fear of public exposure of this material, and the corresponding consequence of underreporting.

(p) Child pornography can become a key source for sexual learning and becomes a “how-to” manual for sexual assault.

. It is equally critical, from CAVEAT's perspective as it is from the police perspective, that the Court be cognizant of the works of the so-called "imagination" such as Boiled Angel #7, Boiled Angel #Ate, Chicken, and How to Have Sex with Kids. This is the type of material which we come into contact with or are made aware of from child victims. It is barbaric, sadistic, grotesque, violent and generally degrades and devalues children and victims as a class. Given our real life experiences, and the shattering reality of these experiences, it is a matter of great worry and concern to see artificial judicial distinctions which are grounded in theory rather than reality. There is nothing imaginary about this material in terms of how it is used by offenders to groom their victims and to act out.

CAVEAT also takes issue with respect to the assumption that section 163.1(4) of the Criminal Code is facially in violation of section 2(b) of the Charter. We feel that a critical analysis of what child pornography is really about places it in the category of a violent form of expression or analogous to a violent form of expression, thereby excluded from section 2(b) Charter protection.

This in turn gives rise to serious concerns for victims who seek protection from the harmful effects of all forms of child pornography. While the respondent and the British Columbia Civil Liberties Association advance arguments under sections 2(b) and 7 of the Charter to support their attack on the constitutional validity of the impugned subsection, CAVEAT wishes to advance the countervailing arguments concerning how victims rights under sections 7 and 15 are being violated, which we respectfully submit are issues of critical importance for an informed and balanced analysis under section one of the Charter.

The issue of community standards, too, is very much a part of our mandate. Community standards with respect to protecting children are different and must be far more vigilant than any other aspect of the criminal justice system as children are the most vulnerable group in our society.

Child pornography, in all its forms, is an essential tool in the abuse of children.

Whether actual children are used in its manufacture, or whether the material is simulated, we, as a society, must have the means to control it. Given our inability to control the deluge of child pornography that is swamping the world on the internet today we urgently need strong, comprehensive law which includes the criminalization of private possession of child pornography.

